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HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.415 of 2002

Jantaram

- Versus -

State of Chhattisgarh

JUDGMENT FOR CONSIDERATION

Sd/-
L.C. Bhadoo
Judge

HON'BLE MR. JUSTICE SUNIL KUMAR SINHA

I agree

Sd/-
Sunil Kumar Sinha
Judge

POST FOR JUDGMENT ON 17TH SEPTEMBER, 2007

Sd/-
L.C. Bhadoo
Judge

(27)

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.415 of 2002

APPELLANT:	Jantaram, Son of Ram Singh Kanwar, aged 19 years, R/o Muhunara, Chowki Rajgamar, Police Station Balco, District Korba.
-Versus-	
RESPONDENT:	State of Chhattisgarh, Through Police Station Balco Nagar, Korba, District Korba (Chhattisgarh)

Present: -

Shri H.V. Sharma, Advocate: For the appellant.

Shri Akhil Mishra, Panel Lawyer: For the State/respondent.

DIVISION BENCH*: -

HON'BLE SHRI L.C. BHADOO AND

HON'BLE SHRI SUNIL KUMAR SINHA, JJ.

J U D G M E N T

(Delivered on 17th September, 2007)

The following judgment of the Court was delivered by ***L.C. Bhadoo, J***: -

1. This appeal is directed against the judgment of conviction and order of sentence dated 20th March, 2002 passed by the Additional Sessions Judge, Korba, in S.T. No.3/2001, whereby the learned Additional Sessions Judge after holding the accused/appellant guilty for commission of offence under Section 302 of the I.P.C., for committing the murder of Sonsai, sentenced him to undergo imprisonment for life & to pay a fine of Rs.500/-, in default of payment of fine to further undergo S.I. for 1 month.

2. The case of the prosecution, in brief, is that PW-1 Ratyano Bai, wife of Sonsai, lodged a report in the Police Station to the effect that on 26-10-2000 deceased Sonsai and Ratyano Bai kept paddy in the threshing field of the accused. Both of them were present in the threshing field. At about 2 p.m., during the day, the accused came in the threshing field and asked

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Sonsai to remove paddy. Sonsai was hard of hearing. Ratyano Bai said that they will remove paddy. Deceased Sonsai asked the accused as he is not fencing threshing field just now, whenever he will fence the threshing field, they will remove paddy, on which the accused attacked the deceased with axe on his stomach, as a result of which axe pierced into stomach & Sonsai fell down on the ground. Ratyano Bai called her sons Roop Singh and Sukh Singh. In the meantime, Panch, Patel and Sarpanch of the village had also arrived.

3. Receiving this report, Station House Officer, Police Station registered FIR Ex.P/1, left for scene of occurrence, after giving notice Ex.P/3, prepared inquest Ex.P/2 on the body of Sonsai. While in the police custody, the accused gave memorandum Ex.P/6, in pursuance of that, axe, weapon of offence, was seized under Ex.P/7. Site plan Ex.P/9 was prepared by Halka Patwari. Site plan Ex.P/9-A was prepared by I.O. The body of the deceased was sent for postmortem examination to 100 bedded Government Hospital, Korba under Ex.P/10 where Dr. D.K. Shrivastava conducted postmortem & prepared postmortem report Ex.P/11. He opined that cause of death was as a result of combined neurogenic & haemorrhagic shock due to injury to abdomen wall leading to protrusion of intestine and injury to kidney leading to shock.

4. After completion of the investigation, charge sheet was filed against the accused in the Court of Judicial Magistrate, 1st Class, Korba, who in turn committed the case to the Sessions Judge, Bilaspur, from where learned Additional Sessions Judge received the case on transfer.

5. The prosecution in order to establish charge against the accused examined 11 witnesses. Statement of the accused was recorded under Section 313 Cr.P.C. in which he denied material appearing against him in the prosecution evidence, stated that he is innocent and has been implicated in

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a false case. He examined one defence witness namely, Kashi Prasad (DW-1).

6. Learned Additional Sessions Judge after hearing learned counsel for the respective parties, convicted and sentenced the accused as aforementioned.

7. We have heard Shri H.V. Sharma, counsel for the appellant and Shri Akhil Mishra, Panel Lawyer for the State/respondent.

8. Learned counsel for the accused/appellant has not disputed homicidal death of Sonsai. Moreover, PW-1 Ratyano Bai, wife of the deceased, has categorically stated that the accused attacked the deceased with axe on his stomach, as a result of which he fell down & died. Ocular evidence of this witness is corroborated by the medical evidence of Dr. D.K. Shrivastava (PW-11). He has stated that on 27-10-2000 he conducted postmortem on the body of Sonsai. He noticed that there was incised wound in epigastric region 5 cm above navel, as a result of which intestine came out of the stomach. There was a perforation in the intestine. Food and fickle matter came out of the intestine. There was incised wound in the size of 4 cm in length in spindle shape & 2 cm in width. Death was homicidal in nature. In view of the above ocular and medical evidence, it is established that death of Sonsai was homicidal in nature.

9. As far as involvement of the accused in the crime in question is concerned, learned counsel for the accused/appellant argued that evidence of PW-1 Ratyano Bai is not worth reliance, as she was not present on the scene of occurrence. There are contradictions between police case diary statement and the Court evidence, therefore, her evidence cannot be believed.

10. In order to appreciate argument advanced by learned counsel for the accused/appellant, we have perused evidence of Ratyano Bai (PW-1), eyewitness. She has stated that on the fateful day paddy was kept in the

threshing field. She was sitting on the cot. At about 2 p.m. her husband came after watering vegetables, at that time the accused came and asked her husband to remove paddy from his threshing field, as he has to fence threshing field. Her husband was hard of hearing, therefore, she replied that today itself he is not going to fence threshing field, as and when he fences threshing field, they will remove paddy, on which the accused became angry. He attacked with axe on the stomach of her husband, as a result of which he sustained injuries. The axe pierced into the stomach of her husband. He fell down and died. She informed about incident to her son Roop Singh. When Roop Singh came, the accused ran away. Roop Singh has been examined as PW-3 who has stated that his mother informed him, therefore, he reached on the spot. PW-5 Sukh Singh has also corroborated above evidence. He has stated that on hearing the cries of his mother he reached on the spot, he saw that Sonsai was lying in injured condition. In cross-examination, defence has not been able to elicit any circumstance which discredit evidence of these witnesses. Shri Sharma argued that there are contradictions between police case diary statement and Court evidence of this witness. The law on the point, as has been held by the Apex Court in the matter of **Leela Ram (Dead) through Duli Chand v. State of Haryana and another**[1], is that:-

> ".....the discrepancies found in the ocular account of the witnesses, unless they are so vital, cannot affect the credibility of the evidence of the witnesses. There are bound to be some discrepancies between the narrations of different witnesses when they speak on details, and unless the contradictions are of a material dimension, the same should not be used to jettison the evidence in its entirety. Incidentally, corroboration of evidence with mathematical niceties cannot be expected in criminal cases. Minor embellishment, there may be, but variations by reason therefor should not render the evidence of eyewitnesses

[1] (1999) 9 SCC 525

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unbelievable. Trivial discrepancies ought not to obliterate an otherwise acceptable evidence."

11. In the light of above principle, if we examine evidence of Ratyano Bai (PW-1), contradictions in the evidence of this witness are not of vital value. By these contradictions the defence has not been able to discredit evidence of Ratyano Bai (PW-1) or has not been able to show that presence of Ratyano Bai on the place of occurrence was doubtful. Even Roop Singh PW-3 and PW-5 Sukh Singh, sons of the deceased, have also stated about presence of their mother on scene of occurrence. Therefore, from the evidence of Ratyano Bai (PW-1), it is established that the accused attacked the deceased with axe as a result of which he succumbed to the injuries.

12. Learned counsel for the accused/appellant argued that there was no animosity between the accused and the deceased. The accused is nephew of the deceased, quarrel started on a petty matter on the issue of putting paddy by the deceased in the threshing field of the accused. The accused without any pre-meditation or preparation went to the field where all of a sudden, some altercation took place, the accused picked up axe and attacked the deceased which proved fatal and he died, therefore, offence against the accused does not travel beyond Section 304 Part-II of the I.P.C.

13. Learned counsel for the State/respondent supported the judgment of the trial Court.

14. Having heard learned counsel for the parties, we have perused record. As per the evidence of Ratyano Bai (PW-1), it is admitted fact that the deceased put paddy in the threshing field of the accused, who is none else than nephew of the deceased, he went to the field & raised objection & asked the deceased to remove paddy, as he wanted to fence threshing field, on which the deceased said that he is not going to fence threshing field just now, as and when he fences threshing field, they will remove

paddy, all of a sudden, the accused picked up axe and attacked the deceased, the axe pierced into stomach of the deceased, which proved fatal. It is not a case of pre-meditation or preparation. However, the accused attacked with deadly weapon i.e. axe on the stomach of the deceased, which proved fatal, therefore, looking to the facts and circumstances of the case, we are of the considered opinion that offence against the accused under Section 302 of the IPC is not made out. However, on the facts and circumstances of the case, offence under Section 304 Part-I of the IPC is made out. For this, we are fortified in our view by the decision of the Apex Court in the matter of **Mahesh vs. State of Madhya Pradesh**[2].

15. In the result, the appeal partly succeeds. Conviction and sentence imposed upon the accused/appellant under Section 302 of the I.P.C. are set aside, instead thereof, he is convicted under Section 304 Part-I of the I.P.C. and sentenced to undergo R.I. for 10 years. The accused is in detention since 27-10-2000 till today. The accused shall be entitled for set off of the above detention period against the sentence imposed upon him.

Sd/-
L.C. Bhadoo
Judge

Sd/-
Sunil Kumar Sinha
Judge

Barve

[2] 1996 (6) Supreme 609